

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION**

KEVIN KELLY,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 5:12-CV-413 (MTT)
)	
WALMART STORES, INC.,)	
)	
Defendant.)	
_____)	

ORDER

This matter is before the Court on the Plaintiff's Motion for Fees and Costs for Failure to Waive Service. (Doc. 7). Following receipt of the Complaint and waiver of service forms, the Defendant's counsel called to inform the Plaintiff's counsel that the Defendant was not willing to waive service. (Doc. 7-1 at ¶ 10). The Plaintiff's counsel reminded the Defendant's counsel of the costs associated with requiring personal service, and the Defendant's counsel stated that he would check with his client. (Doc. 7-1 at ¶ 10). The Defendant's counsel called back to inform the Plaintiff's counsel that his client would not be waiving service, and the Plaintiff's counsel arranged for personal service of the Defendant. (Doc. 7-1 at ¶ 10). The Plaintiff subsequently incurred \$89.00 in service fees and \$940.00 in attorney's fees associated with preparation of this Motion. The Defendant did not file a response to the Motion.

"An individual, corporation, or association that is subject to service under Rule 4(e), (f), or (h) has a duty to avoid unnecessary expenses of serving the summons. The plaintiff may notify such a defendant that an action has been commenced and request

that the defendant waive service of a summons.” Fed. R. Civ. P. 4(d)(1). If a plaintiff does request waiver of service, the plaintiff must “give the defendant a reasonable time of at least 30 days after the request was sent ... to return the waiver[.]” *Id.*

Here, the Plaintiff’s counsel waited over 30 days after mailing a waiver of service form to the Defendant to have the Defendant personally served. (Doc. 7-1 at 22, 26). Because the Defendant failed without good cause to waive service, the Court is authorized to impose upon the Defendant “the expenses later incurred in making service[.]” along with “the reasonable expenses, including attorney’s fees, of any motion required to collect those service expenses.” Fed. R. Civ. P. 4(d)(2).

Accordingly, the Plaintiff’s Motion (Doc. 7) is **GRANTED**, and the Court **ORDERS** that the Defendant shall pay the Plaintiff for his attorney’s fees and costs in having to bring this Motion in the amount of \$1,029.00 and that payment shall be made to the Plaintiff within **30 days** of the entry of this Order.

SO ORDERED, this the 30th day of January, 2013.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT